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10 KEATING DENTAL ARTS, INC.

11 UNITED STATES DISTRICT COURT
12 CENTRAL DISTRICT OF CALIFORNIA
13 SOUTHERN DIVISION

14 JAMES R. GLIDEWELL DENTAL
15 CERAMICS, INC., DBA
16 GLIDEWELL LABORATORIES,
17 a California corporation,

18 Plaintiff,

19 vs.

20 KEATING DENTAL ARTS, INC.,
21 a California corporation,

22 Defendants.

23 KEATING DENTAL ARTS, INC.
24 a California corporation,

25 Plaintiff,

26 vs.

27 JAMES R. GLIDEWELL DENTAL
28 CERAMICS, INC., DBA
GLIDEWELL LABORATORIES,
a California corporation, and
DOES 1 THROUGH 5, inclusive,

Defendants.

Civil Action No.
SA-CV-11-01309-DOC(ANx)

**EX PARTE APPLICATION TO
REINSTATE TO COURT'S
CALENDAR THE HEARING ON
KDA'S MOTION FOR PARTIAL
SUMMARY JUDGMENT**

**SCHEDULED HEARING DATE
WAS:
Monday, March 26, 2012**

**HEARING TIME:
8:30 a.m.**

Pursuant to Rule 7 (Fed.R.Civ.P.) and L.R. 7-19 and 7-19.1, Defendant Keating Dental Arts, Inc. ("KDA") is applying ex parte for the Court to reinstate onto the Court's calendar the hearing on KDA's Motion for Partial Summary Judgment (PSJ).

This afternoon, KDA's undersigned counsel received the Court's minute order denying KDA's Motion for PSJ as "moot." With all due respect, and as explained below, it appears that a mistake has been made, and KDA's Motion for PSJ should be returned to the Court's calendar, hopefully at the same date and time it had been scheduled.

The name, address, telephone number, and e-mail address of opposing counsel is as follows:

Leonard Tachner, Esq.

3990 Westerly Pl.

Newport Beach, California 92660

Telephone: 949-752-8525

E-mail: tachlaw@aol.com and Ltachner@aol.com and jforemantachlaw@aol.com

The undersigned KDA attorney called opposing counsel today and discussed the matters herein, and opposing counsel indicated that he would not take a position on the issue.

FACTUAL BACKGROUND:

The Court's records should reflect the following:

1. On or about January 31, 2012, Defendant KDA filed a motion for leave to file its First Amended Answer and Counterclaims. KDA indicated in that filing that Plaintiff had said that Plaintiff would not oppose the motion. As the hearing date approached and no order had been received from the Court, Plaintiff filed an express statement of non-

1 opposition to that motion. The Court thereafter granted that motion, and
2 today Plaintiff has filed and served its Answer to those Counterclaims.

3 2. On or about February 13, 2012, and independently of the foregoing
4 motion to file its First Amended Answer, Defendant KDA filed its
5 Motion for PSJ. In that motion for PSJ, KDA is seeking PSJ of non-
6 infringement of Plaintiff's trademark. That motion has been fully
7 briefed, and is ready to be argued at the hearing that had been scheduled
8 for eleven days from now.

9 3. KDA's Motion for PSJ is NOT affected in any way by the Court's
10 granting (or had the Court done so, by the Court's denial) of the earlier
11 motion for leave to file a First Amended Answer/Counterclaims. Even
12 without any change to KDA's answer/counterclaims, the claims asserted
13 by PLAINTIFF remain unchanged. It is those claims (the ones that
14 PLAINTIFF filed - NOT the ones that Defendant KDA recently filed)
15 that have been on file with the Court since the day the Complaint was
16 filed by PLAINTIFF. It is THOSE claims (not KDA's counterclaims)
17 for which PSJ is being sought.

18 Accordingly, KDA respectfully submits that there is no basis for declaring
19 KDA's Motion for PSJ as "moot;" it remains fully ready for resolution, and if
20 granted, will be determinative of Plaintiff's claims. As for KDA's counterclaims,
21 those will persist regardless of the Court's ruling on the Motion for PSJ.
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1 If there is any question remaining as to the “mootness/ripeness” of the
2 Motion for PSJ, KDA’s undersigned counsel respectfully requests a very brief
3 telephonic or in-person hearing on the matter (including opposing counsel, of
4 course), if the Court would consider same.

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6 Respectfully submitted,

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8
9 Dated: 2012-03-15

/J. Mark Holland/
J. Mark Holland
J. MARK HOLLAND & ASSOCIATES
Attorney for Defendant and Counterclaim-
Plaintiff KEATING DENTAL ARTS, INC.,
a California corporation

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